BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Petition to Confirm a Consumer's Right	)	RM-11361
To Use Internet Communications Software	)	
And Attach Devices to Wireless Networks)	)	

To: The Commission

COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute ("API"), by its attorneys, is pleased to submit these Comments on the above referenced Petition submitted by Skype Communications S.A.R.L on February 20, 2007, that requests the Commission to declare that *Carterfone* applies fully to wireless networks and to initiate a rulemaking proceeding to evaluate, among other matters, wireless carrier practices in light of *Carterfone* (hereinafter the "Skype Petition").[1]

BACKGROUND

API is a national trade association representing more than 400 companies involved in all phases of the petroleum and natural gas industries,

[1] *See* Public Notice, "Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed, "Report No. 2807, (CGB rel. Feb. 28, 2007); 47 C.F.R. §1.405. The time for filing Comments was subsequently extended to April 30, 2007; Order, Chief, Wireless Telecommunications Bureau, DA-07-1318, rel. March 15, 2007).

including exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the Organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to regulatory proposals affecting telecommunications facilities and services utilized by member companies.

DISCUSSION

API supports the Skype Petition calling upon the Commission (1) to rule that *Carterfone* principles apply to devices that utilize services offered over Commercial Mobile Radio Service ("CMRS") networks, including wireless broadband services, and (2) to prohibit CMRS licensees from engaging in the unreasonable practice of "locking" wireless devices, thereby preventing customers from using wireless devices on compatible wireless networks of other carriers.[2] The extension of *Carterfone* principles to CMRS devices will limit the extent to which CMRS licensees disable features and otherwise cripple applications, such as Bluetooth technology, that are embedded in many CMRS handsets and hold substantial value for business customers.[3]

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[2] API is not taking a position with respect to Petitioner's request to restrict the ability of wireless carriers to limit wireless broadband applications.

[3] David Passmore, *(Un)Acceptable Use*, Business Communications Review, August 2006, p.12 (noting how Verizon Wireless disables Bluetooth wireless technology in wireless devices

In many respects, the Skype Petition is long over due. Wireless service has emerged as the predominant form of voice communications domestically inasmuch as the total number of wireless subscribers now substantially exceeds the number of traditional wireline subscribers,[4] and many new subscribers eschew wireless services and opt exclusively for wireless services to meet their voice communications requirements.[5] As recently reported, the newly combined AT&T is experiencing growth rates approximating 15% for wireless services while its traditional landline voice business continues to erode.[6] The principal CMRS providers also offer wireless broadband services, that are experiencing growth rates in excess of 50% per year.[7]

Large business customers clearly desire the flexibility to maintain the use of wireless devices as they migrate from one wireless carrier to another, taking into account the lack of interoperability between CDMA and GSM networks. For many customers, device portability is becoming the "other side of the coin" to wireless number portability. Increasingly sophisticated devices,

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bundled with Verizon CMRS service); s*ee also*, Skype Petition, at 14-15 (describing how a high-end Nokia wireless handset capable of supporting WiFi technology lacked this capability when provided in conjunction with another wireless carrier's service in the United States).

[4] Skye Petition, at 4, n.4.

[5] Id. at 5, n.6.

[6] Roger O.Crocket, *Meet AT&T's New Boss*, Business Week, April 27, 2007, *available at* http://www.businessweek.com/technology/content/apr2007/tc20070427_884123.htm?chan=top+news_top+news+index_technology.

[7] Always On Real-Time Access, *US Wireless Data Market Update—4Q06 and 2006* ("US wireless data market continued its rapid growth in 2006. Wireless data service revenues jumped almost 84% to approximately $15.8B (from $8.6B in 2005). The service data revenues are likely to top $27B in 2007.") *available at* http://www.chetansharma.com/blog/2007/03/04/us-wireless-data-market-update-4q06-and-2006/.

including PDAs, enable not only voice service and related features, but also Internet search and e-mail capabilities, and provide useful calendaring and contact list functions. The embedded technology and durability of these devices have useful lives that exceed the typical two-year service agreement terms that are common in both the consumer and business marketplace. Corporate customers see a mixed blessing, on occasion, and an unnecessary, time-consuming process, more frequently, when hundreds or thousands of their employees and contractors must replace mobile devices and transfer information embedded in these devices as the customer considers migrating from one wireless carrier to the another.

Over and above the lack of interoperability between GSM and CDMA technologies, there is no business or technological requirement that dictates or requires customers to combine wireless service and wireless device procurements. The device technology refresh cycle—which would support consideration for migrating to service providers using an incompatible wireless technology—may be 2 times or 1.5 times longer than the typical wireless service procurement cycle. Customers should have the right to uncouple the procurement of the wireless service from the procurement/lease of wireless devices. The ability of wireless carriers to bundle equipment and services unduly impedes competitive choice and customer discretion.

Carterfone eliminated the bundling of wireline services and customer premises equipment (CPE) that had been imposed by former Bell System.

This enabled the development of a dynamic, competitive marketplace for CPE, such as PBXs, and, during the emergence of the Internet, routers and other IP-based CPE. Wireline service customers determine the services they wish to purchase--public Internet, carrier-specific IP networks, frame relay/ATM, TDM-based private line services, or varied combinations thereof, and the features and suppliers of CPE to achieve the desired level of service, features and reliability with respect to wireline networks. With the growth and uptake of wireless services, including wireless broadband services, there is no reason to perpetuate a policy that permits wireless carriers to exercise undue influence over the devices that may be used in connection with their services.

Some commentators view the bundling of the wireless services and wireless devices as having already adversely impacted the market for wireless devices:

> The balance of power has clearly shifted from the customer or phone suppliers to the mobile operators, who are calling the shots on the features, functions and even designs of next-generation mobile phones. Mobile operators can easily veto any phone feature they don't like. The vertical integration is beginning to approach that of the old Bell System, when everything from phones to applications were dictated by the carrier.[8]

To the extent that major wireless carriers in the domestic market are in a position to dictate features and functions in the CPE that may be used in

[8] David Passmore, "Carterfone for Wireless," Business Communications Review, February 2005, pp. 14-15.

connection with their networks, the existence of multiple wireless networks cannot be viewed or considered the "regulatory elixir" that addresses the end user interests in securing and using technology that meets their requirements. The key point is that were *Carterfone* extended to CMRS devices, it is far more likely that end users would realize the full benefits of robust development and innovation in wireless devices.

It is generally recognized that CMRS providers subsidize the cost of handsets so that more customers are in a position to secure service at a reasonable monthly rate often for a minimum term commitment for the wireless radio service. This enables wireless carriers to offer phones having features that generate traffic (and revenue) over and above the revenue generated from basic and even advanced voice service capabilities. However, this is a double-edged sword to the extent the wireless carriers unduly influence device design and limit portability of devices. The extension of *Carterfone* to wireless devices will not prevent carriers from specifying handsets, features and technologies that they choose to subsidize. Wireless services are not tariffed and, thus, the difficult issues of de-tariffing wireline CPE will not arise. The benefit of extending *Carterfone* is that device manufacturers will have a market for devices that meet rapidly changing user requirements, particularly business users, whose interests and objectives may diverge from the strategic preferences and objectives of the

wireless carriers. This choice exists in many countries outside of the United States.[9]

Adoption of the Skype proposals will have a positive impact on wireless broadband services, as well. Presently, there are two principal broadband wireless services in the United States: (1) unlicensed WiFi provided by a variety of operators, and (2) the CMRS licensees' broadband data services that utilize CMRS spectrum, both GSM and CDMA-based wireless broadband technologies that collectively, however imprecisely, may be referred to as "3G technologies." In addition, satellite-based broadband offerings are now available. For the next several years, WiFi will remain the most ubiquitously available wireless broadband offering. Sprint and Clearwire are beginning to deploy WiMAX technology in various markets throughout the United States. WiMAX technology utilizes RF and packet technologies and sufficient bandwidth to support applications that currently can be accommodated only over wireline broadband services. As CMRS providers extend their service footprints for 3G technologies and as WiMAX is deployed, choices for wireless broadband services will grow.

A single device that is interoperable with multiple broadband technologies and network providers has substantial value both to business and other institutional customers. In many areas, WiFi may be the only wireless broadband technology option. In other areas, Customers will be able

[9] David Passmore, *Unacceptable Use*, Business Communications Review, August 2006, p. 12.

to select the most feature rich, robust, the least expensive or the most reliable wireless broadband offering in a geographic area as they determine. Extending *Carterfone* to CMRS services, including 3G technologies supported over CMRS spectrum, will help drive investment in wireless broadband services in many areas of the country, including the remote areas of the United States where energy production and exploration activities are conducted and where substantial energy transport infrastructure is located.

CONCLUSIONS

Mobile wireless service is rapidly supplanting basic wireline voice services in meeting basic voice communications requirements. Extension of the *Carterfone* policies to wireless devices that operate on CMRS spectrum, including wireless broadband services, will ensure that restrictions on customer choice in connection with wireless services and devices are not unduly impeded. The Skype proposals will promote competition among wireless services as end users are permitted to uncouple the purchase of wireless services and devices. In addition, Commission policies should be aligned to ensure that wireless devices that may be capable of operating on the principal terrestrial broadband services offerings technologies--3G technologies, WiFi and WiMAX—are generally available to the extent technologically feasible.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Comments of the American Petroleum Institute has been served via electronic mail and regular U.S. mail, postage prepaid, upon the following party, this 30th day of April, 2007:

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